

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

**INDICTMENT FOR HEALTH CARE FRAUD AND ASSET FORFEITURE**

UNITED STATES OF AMERICA	*	CRIMINAL NUMBER:
VERSUS	*	SECTION: “ ”
DR. ROBERT CLEVELAND,	*	VIOLATION:
JEFFERY C. MCELVEEN AND		18 USC §1347
POSITIVE HOME OXYGEN, L.L.C.	*	18 USC §2

\* \* \*

The Grand Jury charges that:

**COUNT 1**

**A. AT ALL TIMES MATERIAL HEREIN:**

**Medicare**

1. The Medicare Program (“Medicare”) was a federal program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. Medicare was administered by the Centers for Medicare and Medicaid Services (“CMS”), an agency of the United States Department of Health and Human Services. Individuals who received benefits under Medicare were often referred to as Medicare “beneficiaries.”
2. Medicare was a “health care benefit program” as defined by 18 U.S.C. § 24(b).
3. Medicare Part B helped pay for certain physician services, outpatient and other services, including durable medical equipment (“DME”) that was medically necessary and was

ordered by licensed medical doctors or other qualified health care providers. DME is equipment that is designed for repeated use and for a medical purpose, such as a power wheelchair identified as Medicare item number K0011.

### **Medicare Billing Procedures**

4. In order to bill Medicare for DME equipment, a DME supplier has to be an approved Medicare supplier. The DME supplier obtains this approval by submitting an application to the DME regional carrier, Palmetto Government Benefits Administrator (“Palmetto GBA”). Upon approval of the application, the DME supplier is issued a unique identification number called a “supplier number,” which is used to submit claims for payment to Medicare for the cost of DME that is supplied to beneficiaries.

5. Medicare permits approves DME suppliers to submit Medicare claims on paper claim forms or electronically. Medicare requires that claims contain: the beneficiary’s name and unique Medicare identification number; the name and identification number of the doctor who ordered the item or service; the item or service that was provided by the supplier; the date of service; and the charge for the item or service.

6. In Louisiana, Medicare Part B is administered by Palmetto GBA, which enters into a contract with the United States Department of Health and Human Services and CMS to serve as the entity or “carrier” that receives, processes, and pays Medicare claims for DME, including those relating to power wheelchairs.

### **Power Wheelchairs and Certificates of Medical Necessity (“CMN”)**

7. Under Medicare rules, Medicare Part B pays for the cost of a power wheelchair that is supplied to a beneficiary when: the beneficiary has a serious, long-term medical or

physical condition; a power wheelchair is medically necessary for the beneficiary; the beneficiary cannot operate a manual (non-motorized) wheelchair; and, the beneficiary is capable of safely operating the controls for a power wheelchair. Under Medicare rules, a beneficiary who requires a power wheelchair is unable to walk and has severe weakness of the upper extremities.

8. In order for a DME supplier to be paid for the cost of a power wheelchair that the supplier provides to a beneficiary, Medicare requires the supplier to obtain documentation that the wheelchair is medically necessary. HCFA Form 843 is required to establish medical necessity. In the HCFA Form 843, also known as a Certificate of Medical Necessity (“CMN”), the Medicare beneficiary’s treating doctor is required to set forth the medical necessity for the power wheelchair. Among other matters, the doctor is required to certify that the beneficiary has severe weakness of the upper extremities due to a neurologic, muscular, or cardiopulmonary disease or condition, and that the beneficiary is unable to operate any type of manual wheelchair. The doctor is also required to sign the CMN after attesting that he or she had received the CMN, is the beneficiary’s treating doctor, and that the medical necessity information is true, accurate, and complete.

9. The CMN includes a section that describes the power wheelchair that is ordered by the beneficiary’s treating doctor and contains the DME supplier’s charge for the item. This section of the CMN forms the basis for the bill that the DME supplier sends to Medicare in order to be paid for the cost of the power wheelchair.

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**The Defendants**

10. **POSITIVE HOME OXYGEN, L.L.C.**, (“PHO”) was a Louisiana corporation. **JEFFERY C. MCELVEEN** managed and operated and made financial decisions for **PHO**.

**PHO** operated as a DME supplier of K0011 power wheelchairs to Medicare beneficiaries. **PHO** was assigned supplier number 4351580001, which was used to submit claims to Medicare for the cost of K0011 power wheelchairs.

11. **DR. ROBERT LYLE CLEVELAND (“DR. CLEVELAND”)** was a duly licensed Medical Doctor with offices located in Greensburg and Independence, Louisiana, and, as such, was a Medicare “provider” authorized to provide certain medical services to eligible Medicare beneficiaries.

**B. THE SCHEME:**

Beginning in or about April 2004, and continuing through in or about August 2005, in the Eastern District of Louisiana, and elsewhere, defendants **JEFFERY C. MCELVEEN**, **POSITIVE HOME OXYGEN, L.L.C.** and **DR. ROBERT LYLE CLEVELAND**, aided and abetted by others, known and unknown to the grand jury, did knowingly and willfully devise and intend to devise, a scheme and artifice to defraud and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the control of, Medicare, a health care benefit program, as defined in 18 U.S.C. § 24(b), in connection with the delivery of and payment for health care benefits, items, and services.

It was part of the scheme and artifice to defraud that **DR. CLEVELAND** signed CMNs for patients who did not qualify for power wheelchairs in exchange for **MCELVEEN** and **PHO** referring patients to **DR. CLEVELAND’S** practice.

It was further part of the scheme and artifice to defraud that **JEFFERY C. MCELVEEN**, by and through **PHO**, submitted fraudulent claims to Medicare seeking reimbursement for the cost of K0011 power wheelchairs ordered for Medicare beneficiaries.

It was further part of the scheme and artifice to defraud that **JEFFERY C. MCELVEEN**, by and through **PHO**, concealed the submission of fraudulent Medicare claims, and the receipt and transfer of fraudulently obtained proceeds and diverted the fraudulently obtained proceeds for his personal use and benefit.

It was further part of the scheme and artifice to defraud that **DR. CLEVELAND** created false CMNs justifying the need for K0011 power wheelchairs which resulted in fraudulent claims for reimbursements from Medicare.

It was further part of the scheme and artifice to defraud that **PHO** submitted, or caused to be submitted, fraudulent Medicare claims requesting reimbursement from Medicare for the cost of K0011 power wheelchairs which resulted in a gross profit to **PHO** in the amount of \$809,169.

**C. THE EXECUTION:**

On or about June 30, 2004, in order to execute and attempt to execute the above-described scheme and artifice to defraud, defendants **JEFFERY C. MCELVEEN**, **POSITIVE HOME OXYGEN, L.L.C.** and **DR. ROBERT LYLE CLEVELAND** submitted and caused to be submitted false and fraudulent Medicare claim number 104182823446000 requesting reimbursement for the cost of a K0011 power wheelchair in the amount of \$7,160.25.

All in violation of Title 18, United States Code, Sections 1347 and 2.

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**ASSET FORFEITURE**

The allegations contained in Count 1 are hereby realleged and incorporated by reference for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Section 982.

As a result of the offense alleged in Count 1, the defendants **JEFFERY C.**

**MCELVEEN, POSITIVE HOME OXYGEN, L.L.C., and DR. ROBERT LYLE**

**CLEVELAND**, shall forfeit to the United States pursuant to Title 18, United States Code, Section 982(a)(7), any and all property, real and personal, that constitutes or is derived directly or indirectly, from gross proceeds traceable to the commission of the offenses as a result of the violations of Title 18, United States Code, Section 1347, which are Federal Health Care offenses within the meaning of Title 18, United States Code, Section 24.

If any of the property subject to forfeiture, as a result of any act or omission of the defendants,

1. cannot be located upon the exercise of due diligence;
2. has been transferred, sold to, or deposited with, a third person;
3. has been placed beyond the jurisdiction of the Court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p) as

incorporated by Title 18, United States Code, Section 982(b) to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property;

All in violation of Title 18, United States Code, Section 982(a).

A TRUE BILL:

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F O R E P E R S O N

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JIM LETTEN (8514)  
UNITED STATES ATTORNEY

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JAN MASELLI MANN (9020)  
Chief, Criminal Division  
Assistant United States Attorney

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PATRICE HARRIS SULLIVAN (14987)  
Assistant United States Attorney

New Orleans, Louisiana  
April 30, 2009